

MCJCPLAT

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 In re:

4 PLATINUM-BEECHWOOD LITIGATION 18 Civ. 06658 (JSR)

5 -----x

6 MARTIN TROTT and CHRISTOPHER 18 Civ. 10936 (JSR)
7 SMITH, as Joint Official
8 Liquidators and Foreign
9 Representatives of PLATINUM
10 PARTNERS VALUE ARBITRAGE FUND LP
(in Official Liquidation) and
11 PLATINUM PARTNERS VALUE ARBITRAGE
12 FUND LP (in Official Liquidation)

13 Plaintiffs,

14 v.

15 PLATINUM MANAGEMENT (NY) LLC,
16 et al.,

17 Defendants.

18 -----x Trial

19 New York, N.Y.

20 December 19, 2022
21 9:30 a.m.

22 Before:

23 HON. JED S. RAKOFF,

24 District Judge
25 and a Jury

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APPEARANCES

HOLLAND & KNIGHT, LLP
Attorneys for Plaintiffs
BY: WARREN E. GLUCK
ELLIOT A. MAGRUDER

KATTEN MUCHIN ROSENMAN, LLP
Attorneys for Defendant Bodner
BY: ELIOT LAUER
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CURTIS, MALLET-PREVOST, COLT & MOSLE, LLP
Attorneys for Defendant Bodner
BY: NATHANIEL C. AMENT-STONE
ALLESANDRA TYLER

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(In open court; jury not present)

THE COURT: Please be seated.

I should welcome back plaintiffs' sole attorney and defendant's five.

I wanted to put on the record that we received two notes this morning.

First note, jury note No. 11 says, can we get Murray Huberfeld's testimony. The second jury note, No. 12, can we get Margaret Miller's deposition. Counsel were able to agree on what should be submitted and was duly submitted. Thank you very much for that.

I have a short matter at 4 o'clock. You can stay in the courtroom, but just move to the back of the courtroom. I need to leave promptly at 4:30.

So my thought was, with your permission, I would have my courtroom deputy tell the jury that they could only sit today until 4:30. If they haven't reached a verdict, they need to come back obviously at 9:30 tomorrow.

Any problem with that?

MR. GLUCK: None, your Honor.

MR. LAUER: We're fine.

THE COURT: Very good. So stay tuned and I'll have my courtroom deputy tell that to the jury.

(Recess)

THE COURT: I see that the plaintiffs have doubled

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1 their appearance.

2 So, here is the note we just received, which my
3 courtroom deputy will mark as jury note 13; is that right?

4 THE DEPUTY CLERK: Yes, sir.

5 THE COURT: Judge, we are deadlocked. We are unable
6 to come to a consensus Re: question No. 1, liability.

7 I'm not totally surprised, first, because this was a
8 close case in many respects; second, because it was very well
9 tried; and third, because we have a very good jury. But, if
10 they think they get to go home, they're wrong.

11 What I would suggest, but I'll hear from counsel, is
12 that we bring them into the courtroom now, that I give them a
13 very soft Allen charge with none of the sort of threatening
14 bells or whistles that would accompany a more final Allen
15 charge, but telling them that we can't imagine a better jury –
16 I really can't – and that the whole point of deliberation is to
17 keep an open mind, and then maybe excuse them for today so that
18 they can come back fresh tomorrow.

19 How does that sound to counsel?

20 MR. GLUCK: Makes sense, your Honor.

21 MR. LAUER: Your Honor, I think for this one, we would
22 accept that, but we do believe that this has been quite an
23 extensive deliberation.

24 THE COURT: We don't know what will happen. I can't
25 imagine anything more fun than having to retry this case. In

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1 any event, let's bring in the jury.

2 (Jury present)

3 THE COURT: So, long time no see. I have your note,
4 but we're going to ask you to continue your deliberations, and
5 let me explain why.

6 First, as counsel and I have observed from day one,
7 you are a terrific jury. I cannot imagine getting a better
8 jury. You have paid such close attention, you've sent us many
9 notes. If you can't reach a verdict, you can't reach a
10 verdict, but I cannot imagine any future jury being, frankly,
11 as good as you are. So I'm hopeful, still, that you can reach
12 a verdict.

13 Now, no one should ever give up their conscientious
14 view. If you say you're divided on question No. 1, basic
15 liability, and if you remain divided, you remain divided, but
16 long experience has shown that what is often helpful in that
17 kind of situation is to sort of give you a little time off, let
18 you go home now and ask you to come back tomorrow with an
19 absolutely open mind, willing to listen to your fellow jurors,
20 willing to rethink views you already have. It doesn't mean in
21 the end if you are sure of your view you should give it up, but
22 often, the experience of most judges is that when a jury as
23 good as you are conscientiously undertakes to rethink the basic
24 issues that, lo and behold, that they are able to come to a
25 resolution.

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1 I should also tell you that counsel tried a very hard
2 case on both sides, they put a huge amount of effort into it,
3 as I'm sure you could see, not least from the number of
4 exhibits, and to ask them to retry it again, which is what will
5 have to happen if there is a deadlock, will be -- if it has to
6 be done, it has to be done, but it will be a considerable
7 burden on them.

8 So, what I would like to do is ask you to go home now,
9 think about, I don't know, the World Cup. There was a tie, but
10 it was resolved in the end. Think about everything but this
11 case. But make sure when you come back tomorrow that you come
12 back with an open mind, willing to rethink all the issues.

13 Again, no one should give up a view that in the end
14 they hold, but I am hopeful that a jury as good as you folks
15 can still come to a resolution. Otherwise, they'll be forced
16 to try this case before a lousy secondary jury that can't
17 possibly compare with you.

18 So, anyway, I thank all of you. I thank the
19 foreperson for what I am sure has been a difficult time. We'll
20 see you tomorrow at 9:30 a.m.

21 (Jury not present)

22 THE COURT: If they remain deadlocked, of course we'll
23 have to schedule a new trial. December 26th appeal to you?
24 Anyway, we'll worry about that -- hopefully, we won't have to
25 worry.

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1 So, we'll see you tomorrow at 9:30. Thanks a lot.

2 (Adjourned to December 20, 2022 at 9:30 a.m.)

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